Supreme Court, U.S.
FILED

02 344 JUN 3 2002

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

PAUL H. WARMBRUN-PETITIONER

V.

DAVID SAMSON-RESPONDENT

Attorney General of New Jersey

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR

THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Paul H. Warmbrun

2 Primrose Lane 2G

Fords, NJ 08863

732-225-3546

23 pp

QUESTION PRESENTED FOR REVIEW

The sworn indictment declaring the petitioner guilty and presuming to conclude the case, is so facially fatally defective that the trial Court did not have jurisdiction.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

The District Court has not made any opinion or comment relative to the facial contents of the indictment or the jurisdictional question presented.

JURISDICTION

The date on which the United States Court of Appeals decided my case was January 15, 2002.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date, March 8, 2002, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this court is invoked under 28 U.S.C. 1254(1)

CONSTITIONAL AND STATUTORY PROVISIONS INVOLVED

JOHNSON V PUCKETT 930 f2d

445, 447 (5th Cir) 112 S.

Ct. 252 (1991) cert.

denied. Defendant may challenge sufficiency of indictment in habeas proceding only is she can show indictment so defective that convicting court had no jurisdiction.

PATTERSON V NEW YORK 432 U.S.

at 210 (1977) the court told the states, "there are constitutional limits beyond which the states may NOT go" in defining the elements of a crime.

U.S. V VREEKEN 803 f2d

1085, 1088 (10th Cir 1986)

cert denied 479 U.S.

1067 (1987) defendant may raise objection at any time to subject matter jurisdiction. The due process clause of the Fourteenth Amendment to the Constitution which requires a Fair and Unprejudice trial.

CASE

November 1989 a second grand jury issued indictment Appendix D. Attorney Bohrod challenged the indictment in 1990 before the trial. In 1992, the Middlesex County Superior Court wrongly amended the indictment by inventing and charging the jury with flight.

Attorney Seltzer challenged the indictment in the State of New Jersey Appellate Court, and petitioner filed a pro se supplemental brief that, "I was illegally convicted of an indictment conceived and prosecuted with illegal evidence." N.J.S.A. 2C:11-4 to quash an indictment is that the defect is clear and palpable. The court extends this to jury instructions. Since the indictment and the amendment flight are both obvious and self evident, the court could not have had a full and fair review and rejected the brief on the merits.

Attorney Welej challenged the indictment and included petitioners brief in application to the State of N.J. Supreme Court. The Supreme Court denied review. The petitioner filed a pro se Post Conviction Relief Petition with the Middlesex County Superior Court which the Court refused to review.

The petitioner then filed a Petition for a Writ of habeas corpus with the United States Discrict Court in Newark. The grounds were nine constitutional violations of the Fourth, Fifth, Sixth and Fourteenth

Amendments.

The respondents argued that the Petition was not exhausted and the District Court dismissed the petition. The petitioner filed an Appeal with the United States Court of Appeals for the Third Circuit.

On January 16, 1998 the Appeals Court issued a certificate of probable cause and reversed the District Court that, I was illegally convicted of an illegal indictment conceived and prosecuted with "illegal evidence" was exhausted and may be embedded in the petition. The case was returned to the District Court. Appendix E

On May 3. 1999 in oral arguments the respondents claimed that the jury charge flight was not exhausted. The District Court agreed and said it would review the other grounds. The petitioner questioned dropping the flight charge and the Court dismissed the petition. The petitioner agreed to drop the amendment flight and the petition was reinstated. The petitioner then filed a motion, "theindictment was so fatally defective that the trial court did not have jurisdiction." Johnson V Puckett,

930 F2d, 445, 447 (5th Cir.) cert denied 112S. Ct. 252 (1991)

Patterson V N.Y. 432 U.S. at 210 (1977)

U.S. V Vreeken, 803, F2d 1085, 1088, (10th Cir 1986) cert denied 479 U.S. 1067 (1987)

Oct. 19, 1999 respondent's filed what they called "Answer" which 43½ months after the petition was filed were arguments against the grounds, that were not filed when the petition was submitted.

On April 24, 2000, the District Court dismissed the petition.

Petitioner requested clarification of an Exhibit and extension of time to reply, which was granted.

On July 25, 2000 the District Court dismissed the petition. Appendix B

It is apparent that there is a misunderstanding in the District Court. The Court has overlooked both the criteria of the State of Appellate Court to judge an indictment and the text of the indictment.

The District Court is acting only on the amendment flight. Second the Court is not considering U.S. V Vreeken and that the jurisdiction question may be raised at anytime.

The petitioner filed an appeal with the United States Court of Appeals for the Third Circuit. The Court dismissed the petition on merits,

however the Courts reply regarding the indictment are not petitioners argument and petitioner requested a rehearing which was denied.

REASONS FOR GRANTING THE PETITION

The United States Court of Appeals for the Third Circuit has entered a decision that "the indictment satisfied the constitutional requirement of notice". This decision conflicts with the decision of the Supreme Court of the United States in the case of Patterson V New York 432 U.S. at 210 (1977). The Court said "there are constitutional limits beyond which the states may not go", defining the elements of a crime. The indictment cannot declare a defendant guilty, which prejudice violates the due process clause of the Fourteenth Amendment which requires a fair, unprejudiced trial.

In my indictment the grand jury on their oath declare, "that petitioner did commit aggravated manslaughter by recklessly causing the death of Dana Richmond under circumstances manifesting extreme indifference to human life."

The declaration presumes to conclude the case.

I have seen newspaper articles reporting similar type indictment accusations and that my indictment has been challenged in eight courts, indicate to this petitioner, that there is a serious flaw in the criminal justice system affecting many people. Only the Supreme Court of the United States can resolve this very important issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Repectfully submitted,

Paul H. Warmbrun

Date June 1, 2002

The United States Court of Appeals for the Third Circuit

Present: SCIRICA, AMBRO, and STAPLETON,

Circuit Judges mailed Jan 28, 2002

CPS-60

Paul H. Warmbrun V Dennis Wertz, et al

C.A. NO. 00-2507

Page 2.

ORDER

The notice of appeal was timely filed within thirty days of entry of the order disposing of Petitioner's motion for reconsideration, and thus we have jurisdiction over this matter. Fed. R. App. P. 4(a)(1)(A), (a)(4)(A)

The application for a certificate of appealability is denied Slack V McDaniel, 529 U.S. 471, 481-82 (2000). To the extent Petitioner alleges that the indictment was illegal because it failed to define an element of aggravated manslaughter and failed to charge alternative offenses, the claim is without merit. The indictment satisfied the constitutional requirement of notice. Hamling V United States 418 U.S. 87, 117 (1974) Schmuck V United States, 489 U.S. 705, 718 (1989).

APPENDIX A

By the Court

"s SCIRICA"

Dated: January 15, 2002

APPENDIX A

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

PAUL WARMBRUN
Petitioner pro se

CIVIL ACTION 96-1053(JCL)

MEMORANDUM AND ORDER

V

DENNIS WERTZ and ATTORNEY GENERAL OF THE STATE
Respondent

FILED APR 24, 2000

Petitioner Paul Warmbrun ("petitioner" or "Warmbrun") filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. For reasons set forth herein, the Court will deny the petition.

Accordingly, IT IS ORDERED on this 24th day of April 2000 that Paul Warmbrun's petition under 2254 is denied. No substantial showing of the denial of a constitutional right having been made, a certificate of appealability shall not issue.

s"John C. Lifland"
John C. Lifland
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

MAY 4, 2000

Paul H. Warmbrun, 2 Primrose Ln. 2G, Fords, NJ 08863

Craig V. Zwillman, Deputy Attorney General

Warmbrun V Wertz, et al 96-1053

Dear Counsel:

The Court is in receipt of Mr. Warmbrun's letter dated April 28, 2000 asking for clarification of this Court's Memorandum and ORder dated April 24, 2000 and for an additional 15 days to file a brief with the Court in response to that opinion.

In response to Mr. Warmbrun's question, the citation on page 9 to State's EX A refers to the Respondent's New Jersey Superior Court Appellate Division brief in this matter, which was supplied to the Court in response to its March 8, 1996 Order which forms part of the record in this suit.

Regarding Mr. Warmbrun's request for an extension of time to file a motion, he may do so within 10 days of his receipt of this letter, pursuant to the requirements of local Rule 7.1(g).

s"John C. Lifland"
John C. Lifland
United States District Judge

APPENDIX B

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

WARMBRUN V WERTZ, et al

Civil Action No. 96-1053 (JCL)

Entered July 25, 2000

Presently before the Court is Petitioner's motion for reconsideration of this Court's April 4, 2000 Order denying his petition for habeas corpus relief pursuant to 28 U.S.C. 2254 for the reasons set forth herein, the Court will deny the motion.

Accordingly, It IS on this 21st day of July 2000 ORDERED that Petitioner's motion for reconsideration is denied.

There is no basis for appeal.

"s John C. Lifland"

JOHN C. LIFLAND

UNITED STATES DISTRICT JUDGE

APPENDIX B

UNITED STATES COURT OF APPEALS FOR

THE THIRD CIRCUIT

WARMBRUN V WERTZ, et al

C.A. NO. 00-2507

Entered March 8, 2002

Judges: SCIRICA, AMBRO, and STAPLETON

See #CPS-60

ORDER

The foregoing motion is denied.

By the Court

"s SCIRICA"

CIRCUIT JUDGE

Dated: March 8, 2002

Aggravated Manslaughter N.J.S.A.2C:11-4a

NEW JERSEY SUPERIOR COURT

MIDDLESEX COUNTY

LAW DIVISION

(CRIMINAL)

Received and Filed November 12, 1989

THE STATE OF NEW JERSEY

VS.

PAUL WARMBRUN

Defendant File No. 89001548

Indictment No. 2754-11-89

Second Grand Jury

July Term 1989

Count 1 Aggravated Manslaughter 1st Degree

The Grand Jurors of the State of New Jesey for the County of Middlesex, upon their oaths, present that Paul Warmbrun on or about the 17th day of February 1989, in the Township of North Brunswick in the County of Middlesex, aforesaid and within the jurisdiction of this Court, did commit aggravated manslaughter by recklessly causing the death of Dana Richmond under circumstances manifesting extreme indifference to human life; contrary to the

provisions of N.J.S.A.2C:11-4a and against the peace of this State, the Government and dignity of the same.

"s Cel S Roshm"

County Prosecutor

"s Michael Hogan"

Foreperson

"s Nicklas Sewitch"

Assistant Prosecutor

THE UNITED STATES COURT OF APPEALS for

THE THIRD CIRCUIT

WARMBRUN V WERTZ, et al January 16, 1998

Judges. BECKER, NYGAARD, ROTH

Docket NO. C.A. 97-5680

ORDER

The request for a certificate of probable cause is granted. The Court finds that the claim that petitioner was "illegally convicted of an illegal indictment, conceived and prosecuted with illegal evidence" from his pro se supplemental brief is exhausted and believed that this claim may be embodied in the present habeas petition. Petitioner is entitled to pursue this claim now provided he can demonstrate to the district courts satisfaction that his claim is indeed embodied in the present habeas petition and is not barred by Stone V Powell 428 U.S. 465 (1976) (Fourth Amendment claims not cognizable in habeas where there has been full and fair opportunity to litigate in state court) (to the extent that the "illegal evidence" refers to the results of the blood test showing that petitioner was intoxicated, this claim is barred by Stone V Powell because it is based on petitioner's assertion that his blood was drawn in violation of the Fourth Amentment). All other unexhausted claims would have to be withdrawn. If petitioner

cannot satisfy the district court that the "illegally convicted of an illegal indictment conceived and prosecuted with illegal evidence" claim is embodied in the present habeas petition then the district court shall dismiss the petition for failure to exhaust state remedies so that petitioner can pursue the state's suggestion of a nunc pro tunc appeal of the denial of his post conviction petition. See Doctor V Walters 96 F3d 675, 681 (3rd Cir 1996). The orders of the district court entered July 25, 1997 and September 1997 are hereby vacated and the matter is summarily remanded to the district court for further consideration consistent with this order.

By the Court

"s ROTH"

CIRCUIT JUDGE

DATED January 16, 1998

Supreme Court, U.S.
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TYPOGRAPHICAL CORRECTION

Paul H. Warmbrun

2 Primrose Lane 2G

Fords, NJ 08863

732-225-3546

3 pp

Petition for a Writ of Certiorari

Case Page 4

Line 7-8 Should Correctly Read

"I was illegally convicted of an illegal indictment,
conceived and prosecuted with illegal evidence."

CORRECTION